

CORPORATE GOVERNANCE
Duties and Liabilities of board members in Investment Funds
The Legal Situation in Luxemburg and in Europe

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I. – Managers of an investment fund

A. – Investment company

1) Self-managed investment company

2) Investment company managed by a “designated” management company

B. – Contractual funds

II. - Rules of conduct regarding corporate governance in Investment Funds

A. - Fiduciary duty

1) Duty to act in the best interest

a) Best interest of the investor or/and the UCITS?

b) Best or sole interest of the investors ?

2) “Implementing” duties

a) Duty of loyalty

b) Duty of due care and diligence

c) Duty to act independently

d) Other duties

- Duty of information

- Duty of compliance

B. - Duty to avoid and manage conflicts of interest

III. – Managers liability in Investment Funds

A. - Civil liability

1) Investment company

a) Vis-a-vis the company

1° Luxembourg 1915 Act (art. 59, al. 1 & 2)

2° Tort liability

b) Vis-a-vis the shareholders

c) Vis-a-vis the third parties

2) Contractual funds

B. Criminal liability

- 1) Criminal code
- 2) 1915 Act criminal offenses
- 3) 2010 Act regarding UCI (art. 165 to 171)

C. Administrative liability